respect this office cannot advise you whether the treatment prescribed is in fact a medical one.

Aside from this fact, however, there is little doubt but that the individual under discussion is advertising that he is, and is, in fact, holding himself out as practicing a system or mode of treating the sick and afflicted. Certainly the law cannot countenance an unlicensed person stating that he is supplying a treatment as used and prescribed by a person who is apparently a physician and then denying that he is either treating or prescribing.

Mr. Williams advises that the person under discussion has informed him it was not necessary to be licensed in order to treat hair and scalp conditions. If such individual uses drugs or what are known as medicinal preparations in or upon a human being, or penetrates the tissues of human beings, or treats diseases, injuries, deformities or other physical or mental conditions, such individual is in error in his statement. (Business and Professions Code, Section 2137.)

The Miller case, above referred to, indicates that the Medical Practice Act was enacted for the protection of the public health against the ignorant, charlatan, and imposter. It is confined to the practice of medicine as science, and is aimed at those who profess to be what they are not.

In conclusion, we would state that if the treatment consists of the administration of medicinal preparations for the purpose of correcting a physical deformity, any person using the same for such purpose would violate the provisions of Section 2137 of the Business and Professions Code, as well as Section 2141 thereof. If the treatment does not consist of the use of medicinal preparations in or about human beings or the penetration of the tissues of human beings, but consists of the treatment of diseases, injuries, deformities, or other physical conditions without the use of drugs, or what are known as medical preparations, a person not licensed as a drugless practitioner or as a physician and surgeon would violate the provisions of Section 2138 of said Code.

EARL WARREN, *Attorney-General.*
(Signed) By Lionel Browne, *Deputy.*

MEDICAL JURISPRUDENCE†

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LEGAL RESPONSIBILITY OF PHYSICIANS TO PATIENTS AND OTHERS IN OFFICE FOR CONDITION OF OFFICE AND ALL EQUIPMENT: EXTENT OF COVERAGE UNDER MALPRACTICE AND PUBLIC LIABILITY POLICIES

In the recent case of *Johnston* vs. *Black Company,* 97 Cal. App. Dec. 810, the California District Court of Appeal, First District, upheld a verdict in favor of a defendant radiologist rendered in a suit brought to recover damages for injuries sustained as the result of a fall from a fluoroscopic table. This decision again affirms the rule of law that the mere occurrence of an injury while in the office of a physician or surgeon is not of itself a sufficient basis for the recovery of damages. In this instance, plaintiff, a woman of middle age, was asked to stand upon the foot rest of the table by the radiologist's technician, who customarily placed patients on the table in readiness for examination by the physician. The technician then commenced to lower the table by starting an electric motor which controlled its elevation. Shortly after the motor started, the table suddenly began to jerk. Before anything could be done the table plunged abruptly to a subhorizontal position and catapulted the plaintiff to the floor. The plaintiff received a pressure fracture of the spine and was confined to bed for a long period of time. Her claim was, in effect, that a physician should be an insurer of the safety of persons visiting his office and that accordingly the mere occurrence of the injury while in the physician's office should require a verdict in her favor.

The defense of the doctor was that the accident raised only an inference of negligence on his part, thereby placing upon him the burden of showing that the accident arose through no fault of his. He then proved that the accident was caused not by any lack of proper maintenance of the equipment or any negligence in its operation, but by the crystallization and subsequent sheering off of a steel taper pin embedded in the drive shaft of the table and constituting a permanent part of the mechanical apparatus. Experts testified that the pin was made and installed in such a manner that it ought not be removed during the life of the table.

Thus there was present a situation in which neither plaintiff nor defendant could be accused of lack of care but one in which a patient had suffered serious injuries. The jury rendered a verdict for defendant, and this verdict was upheld by both the Appellate and Supreme Courts. The case is extremely interesting to the practicing physician who must daily rely on his equipment and can do nothing toward the prevention of mishaps other than the exercise of care in its maintenance. It illustrates the absolute legal *necessity* for constant care in the purchase and *maintenance* of all office equipment. If the radiologist had been unable to prove constant care and maintenance of the fluoroscopic table, he would probably have had a large verdict awarded against him.

Another interesting point connected with the case, although not a part of the court proceedings, was the status of the doctor's insurance protection. Fortunately, the physician concerned carried both malpractice and public liability policies, under one or the other of which he was bound to be protected. However, the positions taken by the respective companies concerning their respective liabilities was interesting. The malpractice insurer contended that as the physician was not even in the room at the moment the accident happened, and as everything leading up to the accident was mere preparation for examination, it had no liability under its malpractice coverage. On the other hand, the public liability insurer contended that the malpractice insurer should be liable because the accident occurred while the patient was in the hands of the physician's assistant and during the occurrence of matters preliminary to treatment. Had there been a large verdict and judgment against the defendant physician, he would, no doubt, have been subjected to some embarrassment arising from the understandable unwillingness of either company to accept responsibility without a judicial decision. The question of liability was an extremely close one. It could well have been decided either way, thus proving conclusively that it is prudent to carry both malpractice and public liability insurance. If the doctor had carried only malpractice insurance, it might have been held that public liability was involved, in which event the doctor would have had no insurance protection.

† Editor's Note.—This department of CALIFORNIA AND WESTERN MEDICINE, presenting copy submitted by Hartley F. Peart, Esq., will contain excerpts from and syllabi of recent decisions and analyses of legal points and procedures of interest to the profession.

Recovery from Tuberculosis.—Much has been said and written of late years as to the relative value of the early diagnosis of pulmonary tuberculosis, but it is no less important to be sure by reliable tests that the disease is arrested. Temperature, pulse rate, blood sedimentation, and x-rays should all be utilized in coming to a decision, and after there is no further progression, time should be given for the healing of the existing pathologic process. Only then can the patient be assured that recovery has taken place and that recurrence is unlikely under the ordinary stresses of life.—J. W. Green, Med. Bull. Vet. Adm., January, 1936.